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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,454	02/10/2004	Klaus Kupper	03191/0200755-US0	3591
7278	7590	09/07/2005	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			PANG, ROGER L	
			ART UNIT	PAPER NUMBER
			3681	

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/776,454

Applicant(s)

KUPPER ET AL.

Examiner

Roger L. Pang

Art Unit

3681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 6-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 10 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |



### **DETAILED ACTION**

The following action is in response to the election filed for application 10/776,454 on July 14, 2005.

#### ***Election/Restrictions***

Claims 6-9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim.

Applicant timely traversed the restriction (election) requirement in the reply filed on July 14, 2005.

Applicant's election of Species 1 in the reply filed on July 14, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Pels '247.

With regard to claim 1, Pels teaches a method for upshifting an automatic transmission that is contained in a drive train of a motor vehicle and comprises e two parallel drive arms 2a/2b, each with its own clutch 5/6, the method comprising the steps of: activating one of the drive arms by

Art Unit: 3681

engaging the clutch allocated to the drive arm, so that a new gear can be engaged in the other drive arm; activating the new gear by disengaging the engaged clutch and engaging the other clutch (Col. 23); and upshifting under power of the parallel manual transmission based upon preset operating conditions, without an electronically controlled, load-reducing ignition retard (via clutch manipulation; Col. 3). With regard to claim 2, Pels teaches the method, further comprising the step of transmitting a preset operating condition by fully depressing an accelerator pedal (Col. 23). With regard to claim 4, Pels teaches the method, further comprising the step of indicating the preset operating condition by holding the vehicle at a standstill by an actuation of the brakes when the accelerator pedal is depressed beyond a predetermined degree (i.e. 0 degrees) (Col. 17).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ludanek in view of Le Van. With regard to claims 1 and 10, Ludanek teaches a method for upshifting an automatic transmission that is contained in a drive train of a motor vehicle and comprises two parallel drive arms E1/E2, each with its own clutch K1/K2, the method comprising the steps of: activating one of the drive arms by engaging the clutch allocated to the drive arm, so that a new gear can be engaged in the other drive arm (Col. 8, lines 46-50); activating the new gear by disengaging the engaged clutch and engaging the other clutch (Col. 8, lines 51-67); and

Art Unit: 3681

upshifting under power of the parallel manual transmission, without an electronically controlled, load-reducing ignition retard (Col. 5). Ludanek lacks the specific teachings of preset operating conditions to actuate the upshifting. Le Van teaches a transmission that is actuated by a controller via preset operating conditions (Fig. 4). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ludanek to employ the preset operating conditions of Le Van in order to provide control means suitable for controlling an automatic operating mode for changing gear ratios in the gearbox (Col. 2, lines 22-25). With regard to claim 2, Le Van teaches the method, further comprising the step of transmitting a preset operating condition by fully depressing an accelerator pedal (Fig. 5; 520). With regard to claim 3, Le Van teaches the method, further comprising the step of transmitting the preset operating condition by additionally actuating a shifting program (322->320).

***Allowable Subject Matter***

Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hollingsworth has been cited to show similar preset conditions.

Buchanan, Yamasaki, Bowen and Adamis have been cited to show similar transmissions with similar controls.

### FACSIMILE TRANSMISSION

Submission of your response by facsimile transmission is encouraged. The central facsimile number is (571) 273-8300. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see MPEP 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitting by facsimile transmission separately from the check.

Art Unit: 3681

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on \_\_\_\_\_ (Date)

Typed or printed name of person signing this certificate:

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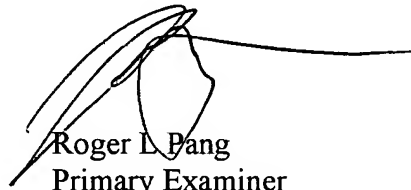
If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roger L. Pang whose telephone number is 571-272-7096. The examiner can normally be reached on 5:30am to 4:00pm.

Art Unit: 3681

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Roger L. Pang  
Primary Examiner  
Art Unit 3681

September 2, 2005